

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

TREMEL ANDERSON,

Defendant-Appellee.

Supreme Court No. 155172

Court of Appeals No. 327905

Lower Court No. 15-001051-AR

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STATEMENT OF JURISDICTION

The Court of Appeals had jurisdiction under MCR 7.203(B)(1) to decide the prosecution's appeal. This Court has jurisdiction over the appellant's application for leave to appeal under MCR 7.303(B)(1).

STATEMENT OF QUESTION PRESENTED

- I. Should this Court deny leave to appeal when the Court of Appeals correctly upheld the dismissal of the charges against Ms. Anderson when the finder of fact found that the only witness against Ms. Anderson was not a credible witness?**

Prosecution-Appellant answers, “No”

Defendant-Appellee answers, "Yes".

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Ms. Anderson files this brief in opposition to the prosecution's application for leave to appeal the unpublished opinion of the Court of Appeals (Saad, P. J., and Jansen and M. J. Kelly, JJ.). The Court of Appeals' November 29, 2016 opinion affirmed the circuit court order denying the prosecution's motion to reverse the district court order dismissing the charges against Ms. Anderson. The Court of Appeals correctly applied the law and reached the correct result when it found that the district court did not abuse its discretion in refusing to bind over Ms. Anderson on the charges.

The district court found that the complaint's version of events and testimony was wholly incredible and the prosecution presented no other corroborating evidence to support the charges. The court pointed out that the complainant's version of events was not believable when he insisted that Ms. Anderson pointed a gun at him and asked him to get out of the car, but instead of getting out of the car, he stayed demanding his Christmas presents. That while it was the defendant who called 911 that day, this was merely a distraction, and that while she was on the phone with the police she decided to fire a gun at him. It was entirely within the district court's discretion to make findings as to the witness' credibility.

The prosecution presented no corroborating evidence whatsoever to the complainant's version of events. The prosecution presented no evidence that a gun was recovered, no witnesses to show there were any spent casings found, nor any evidence supporting that a gun was ever had or fired that day. While the prosecution is not required to present multiple pieces of evidence or call several witnesses at a preliminary examination, when the only piece of evidence they do present is the unbelievable testimony of one witness, there is insufficient evidence to support a bind over.

While there may be some tension between the idea that a magistrate may address the credibility of witnesses and that a magistrate should bind over a defendant for trial even when there is a reasonable doubt or when the evidence conflicts, there is not a conflict between these two principles. *People v Yost*, 468 Mich 122 n 8, 128; 659 NW2d 604 (2003). Nor is that ground to grant the prosecution's application here. In the case before this Court, there was no conflicting evidence, merely a complete lack of credible evidence. The district court did not abuse its discretion in refusing to bind over Ms. Anderson for trial. This Court should deny the prosecution's application for leave to appeal.

STATEMENT OF FACTS

The Court of Appeals correctly summarized the pertinent facts and procedure in its opinion.

- I. This Court should deny leave to appeal. The District Court did not abuse its discretion in refusing to bind over Ms. Anderson for trial when the prosecution presented no credible evidence to support the bind over.**

Standard of Review

An appellate court reviews the district court's decision to bind a defendant over to circuit court for an abuse of discretion. *Yost*, 468 Mich at 126. Abuse of discretion acknowledges that there are circumstances in which there will be more than one reasonable and principled outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231, 243 (2003) (citing *People v Talley*, 410 Mich 378, 398; 301 NW2d 809 (1981)). "When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Babcock*, 469 Mich at 269.

A district court's factual determinations are reviewed for clear error. MCR 2.613(C). Therefore, such determinations should only be disturbed if this Court is left with "a definite and firm conviction that a mistake was made." *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008).

Argument

The Court of Appeals correctly found that the district court did not abuse its discretion in not binding over Ms. Anderson for trial. The only evidence presented against Ms. Anderson was the wholly incredible complaining witness. The district court rightfully considered the complaining witness' lack of credibility when finding insufficient evidence to support the bind over. District courts must consider not only the weight and competency of the evidence but also the credibility of witnesses during the examination. *People v Redden*, 290 Mich App 65, 84; 799 NW2d 184 (2010).

This was not a situation where there was conflicting evidence presented, leaving a question for a jury. The prosecution called one witness, which the court found to be incredible. There was not conflicting other evidence or open questions of guilt or innocence. The court was faced with the complete lack of credible evidence and correctly found that there were insufficient grounds to bind over Ms. Anderson for trial.

Any argument that the district court should apply a directed verdict standard is without merit. The district court serves as a way to prevent “groundless or supported charges” from reaching the jury to begin with, to prevent the accused from a hasty prosecution. *People v Duncan*, 388 Mich 489, 501; 201 NW2d 629 (1972). Limiting a district court from being able to make credibility determinations would likely deprive the court with the ability to do just that. The *Lemmon* directed verdict standard is often described as being limited so that judge will not be able to use it to act as a “13th juror”. *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). At an examination the judge **is** the finder of fact, rather than a body second guessing a finder of fact. This Court should deny leave to appeal.

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court deny the prosecution's application for leave to appeal.

Respectfully submitted,

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Dated: March 20, 2017